LAFAYETTE LIBRARY AND LEARNING CENTER FUNDING AGREEMENT

This Funding Agreement ("Agreement") is entered into this _____ day of April, 2008, by and between the City of Lafayette ("City") and the Lafayette Library and Learning Center Foundation ("Foundation"). The City and the Foundation are sometimes collectively referred to in this Agreement as the "Parties" and individually referred to as "Party". The Agreement is made in light of the following Recitals:

RECITALS

A. The Lafayette Redevelopment Agency ("Agency") is in the process of constructing a new and expanded library in the City of Lafayette, which library shall be known as the Lafayette Library and Learning Center ("Library"). The Library includes the Glenn Seaborg Learning Consortium ("Consortium").

B. The Library is located at the corner of Mt. Diablo Boulevard and First Street, in the City of Lafayette ("Property").

C. Agency intends to lease or transfer the Property to the City to maintain the Library and grounds.

D. The City and Contra Costa County ("County") have executed a Library Use, Operations and Maintenance Agreement dated January 13, 2004 (the "County Agreement"), in which the County agrees, among other things, to (i) operate the Library, and provide staff training, professional development, ongoing collection development, long-range planning and implementation of the Library Plan of Service, and (ii) provide a financial contribution for these services in the same amounts as those currently provided for the existing Lafayette Library on Moraga Road, which amounts shall be adjusted for the change in the cost of living for the most recently published twelve (12) month period, as shown by the U.S. Department of Labor in its All Urban Consumers Index set forth for the San Francisco-Oakland-San Jose area.

E. The Parties desire to enter into this Agreement in order to outline their roles and responsibilities regarding the Library.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and in light of the above Recitals, which are hereby made a part of this Agreement, the Parties hereby agree as follows:

1. Term

The term of this Agreement shall commence upon April , 2008 and continue until December 31, 2039 ~~for ten (10) years. The Agreement may be renewed by mutual consent of the Parties for additional five (5) year terms. If the Parties desire to extend the term of the Agreement, unless otherwise agreed upon, the Parties must commence negotiations and discussions in good faith within the first three (3) months of the eighth year in the initial term and the third year of subsequent terms.~~

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2. Agreement Contingent on Lease Agreement

This Agreement is not effective unless and until a separate Lease Agreement for the Library or an agreement to convey the Property is executed between the Agency and the City.

3. Responsibilities of the Parties

3.1 Budget

The City will maintain the Library and will pay an amount equal to the current expenditures by the City for the operation and maintenance of the existing Lafayette Library on Moraga Road and shall be adjusted for the change in the cost of living for the most recently published twelve (12) month period, as shown by the U.S. Department of Labor in its All Urban Consumers Index set forth for the San Francisco-Oakland-San Jose area. The Foundation shall contribute funds to the City for Library operation, maintenance, programming, and collections as set forth in this Section 3. The Foundation shall also contribute funds for Consortium operation, programming, marketing, and administration.

The City and the Foundation shall jointly prepare and approve a budget of Library costs and expenses. In determining the number of hours during which the Library is open for purposes of the budget, the City and Foundation shall take into account the amounts provided to fund these services as provided by the County pursuant to the County Agreement, the City, as described above, and other organizations, including the Foundation.

3.2 Payment Request

The City will submit a payment request ("Library Payment Request")~~a budget request~~ to the Foundation at least six months in advance. ~~a payment request ("Library Payment Request").~~ The Library Payment Request submitted by the City shall be no more than allowable costs less expected funding from the County pursuant to the County Agreement, the City's general fund, Library rental income, and other Library sources that may evolve and are mutually agreed upon between the Parties.

3.3. Foundation Contribution

3.3.1 The Foundation shall make a final review of the Library Payment Request and make a determination on the Library Budget within 90 days following receipt. If the Foundation approves or partially approves the Library Payment Request including the amount shown in such budget to be funded by the Foundation, it shall pay the City half the of the amount shown to be funded by the Foundation within 10 days following the beginning of the fiscal year for the Library Payment Request and the remaining half six months after the first payment. If the Foundation projects that its funds will be insufficient to fund the amount shown as its contribution to the Library Payment Request, it shall notify City within 10 calendar days of its determination. If the Foundation's funds are insufficient to meet the projected contribution expected in the Library Payment Request, the Foundation shall make the maximum payment possible from available assets as determined by the Foundation's Trustees unless a different amount is approved following discussions with the City.

3.3.2 Contribution of funds to the City for Library operations by the Foundation shall be subject to the Foundation having received and continuing to receive any and all required payments from the Agency pursuant to the Loan Agreement between the Foundation and the Agency dated April , 2008.

3.4 Responsibilities of the City

All funds received from the Foundation and the required funding from the City pursuant to this Agreement shall be solely used to support costs in the budget agreed upon by the Parties as required in this Section 3. All funds received from the Foundation pursuant to this Agreement shall be placed into a separate City account earning interest and all interest shall be retained within the account. The City shall control how the funds are invested which shall be made in accordance with the City's approved investment policy as amended.

4. Remedies and Termination

4.1 Remedies

The Parties agree to provide each other with written notice of nonperformance, unsatisfactory performance, or any other dispute arising from the terms of this Agreement within thirty (30) days of the deficiency or dispute being identified. The Parties shall have ninety (90) days from receipt of said written notice to correct any performance deficiencies. The Parties may mutually agree to extend the 90 day cure period. The Parties agree to cooperate in good faith to resolve any performance issue or dispute arising from this Agreement. Either Party in its sole and absolute discretion may waive a default that cannot be cured.

4.2 Termination

In the event any dispute cannot be resolved under these procedures, each Party retains such legal and equitable remedies as it may have under law to enforce this Agreement. If either Party defaults under this Agreement and does not timely cure such default, the non-defaulting Party may terminate this Agreement upon providing written notice of termination of this Agreement to the defaulting Party, in which case this Agreement shall terminate.

In the event of termination of the Use Agreement between the parties, this agreement will also ~~not~~ be terminated unless agreed to otherwise by the parties.

5. Indemnification

~~5.1~~ City agrees to indemnify, defend and hold harmless Foundation, its officials, officers, trustees, employees, agents and consultants on account of any and all claims for damages because of (i) personal injury, sickness or death of any person, injury, damage or destruction to property, (ii) any breach by the City of any representation, warranty or covenant of this Agreement, (iii) any violation by the City of any applicable local or state laws, ordinances, rules, regulations or lawful orders bearing on the performance of any obligations under this Agreement, or (iv) other cost , charges or damages arising out of in any way the operation of the

Lafayette Library. This indemnification is intended to be as broad as possible and as broad as allowed by law. Only in the instance of damage caused solely and exclusively by the ~~gross~~ negligence and/or ~~gross~~ malfeasance of the Foundation or its employees or agents will the indemnification not apply. This indemnification includes but is not limited to indemnifying for attorneys' fees, costs and other related expenses, including expert witness fees incurred by the Foundation directly, through its carriers or for its agents and/employees.

~~5.2 The Foundation agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants on account of any and all claims for damages because of personal injury or death or damages to property, or other costs and charges, directly or indirectly arising out of or attributable to, in whole or in part, Foundation's gross negligence and/or gross malfeasance of, its officers, trustees, employees, agents and consultants in the performance of its obligations under this Agreement. The coverage of such indemnification shall include, without limitation, attorneys' fees and court costs incurred by the City with regard thereto.~~

6. Notices

Whenever it shall be necessary for either Party to serve notice on the other regarding this Agreement, such notice shall be served either in person, by certified mail, return receipt requested to the addresses below.

City: City of Lafayette
3675 Mt. Diablo Blvd., # 210
Lafayette, California 94549
Attn: City Manager

Foundation: Lafayette Library and Learning Center Foundation
P. O. Box 1472
Lafayette, California 94549
Attn: Treasurer

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

7. Legal Costs

In the event of any legal action between the City and the Foundation arising out of the obligations of the Parties pursuant to this Agreement, the prevailing Party will be entitled to payment of its costs and expenses, including its attorneys' fees.

8. Binding Effect; Successors

The Foundation shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City, which

may be given in the City's sole and absolute discretion. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. This Agreement shall bind and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns and all of the Parties thereto shall be jointly and severally liable hereunder.

9. Counterparts

This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument which shall be binding upon the Parties notwithstanding that the Parties may not be signatories to the same counterpart or counterparts. The Parties may integrate their respective counterparts by attaching the signature pages of each separate counterpart to a single counterpart.

10. Further Assurances

Whenever requested to do so by the other Party, each Party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, release, powers of attorney, instruments of further assurance, approvals, consents, and any further instruments or documents that are necessary, expedient, or proper to complete anything contemplated by this Agreement. In addition, each Party shall do any other acts and execute, acknowledge, and deliver any requested documents in order to carry out the intent and purpose of this Agreement.

11. Modifications

All modifications to this Agreement must be in writing and signed by the Parties.

12. Third-Party Rights

Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies.

13. Governing Law; Choice of Venue

This Agreement shall be governed and construed in accordance with California law. Venue shall be Contra Costa County.

14. Severability

If any provision of this Agreement becomes or is declared by a court to be illegal, unenforceable or void, that clause will be omitted and the remainder of the Agreement will continue in full force and effect. Such holding shall in no way affect the validity or enforceability of this Agreement.

15. Entire Agreement

This Agreement is the entire agreement between the Parties and supersedes any prior or contemporaneous representations, understandings or agreements, whether written or oral.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first hereinabove written.

[Signature on the following page]

City of Lafayette

_____
Mike Anderson, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk

Lafayette Library and Learning Center Foundation

_____
Treasurer

Draft - Subject to Change 4-8-08

LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of April __, 2008, by and between the Lafayette Redevelopment Agency (the "Agency") and the Lafayette Library and Learning Center Foundation (the "Foundation");

W I T N E S S E T H:

WHEREAS, the Agency is a duly constituted redevelopment agency under the laws of the State of California and pursuant to such laws has duly proceeded with the redevelopment of its Lafayette Redevelopment Project Area (the "Project Area"); and

WHEREAS, the Redevelopment Plan for said Project Area provides for tax increment financing in accordance with the provisions of Chapter 6, Part 1 of Division 24 of the Health and Safety Code of the State of California and Section 16 of Article XVI of the Constitution of the State of California; and

WHEREAS, in furtherance of the Redevelopment Plan for the Project Area, and after complying with the requirements of Health & Safety Code Sections 33445 and 33679, the Agency has determined to assist in financing the Lafayette Library and Learning Center (the "Project") by borrowing from the Foundation under this Loan Agreement an amount to be used by the Agency to pay for a portion of the cost of the Project; and

WHEREAS, Health and Safety Code Section 33132 and 33600 authorizes the Agency to borrow or accept financial assistance for the agency's activities, powers, and duties.

NOW, THEREFORE, in consideration of the mutual covenants herein contained it is agreed by and between the parties hereto, as follows:

Section 1. Definitions. Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Loan Agreement and of any amendment hereto, and of any certificate, opinion, estimate or other document herein mentioned, have the meanings herein specified

"Agency" means the Lafayette Redevelopment Agency, a redevelopment agency and public body, corporate and politic, duly organized and existing under and by virtue of the laws of the State of California.

"Bonds" means all tax allocation bonds or other evidences of indebtedness outstanding as of the date hereof or issued in the future by the Agency and secured by Tax Increment Revenues which are sold to parties other than the City or any subordinate agency of the City or the Foundation.

"Foundation" means the Lafayette Library and Learning Center Foundation, a

non-profit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California.

"Foundation Repayment Bonds" means Bonds expected to be issued by the Agency during calendar year 2015 for the purpose of, among other things, repaying a portion of the Loan.

"Law" means the Community Redevelopment Law of the State of California, constituting Part 1 of Division 24 of the Health and Safety Code of the State of California and the acts amendatory thereof and in supplement thereto. Whenever reference is made in this Loan Agreement to the Law, reference is made to the law as in force on the date of the execution of this Loan Agreement, unless the context otherwise requires.

"Project" has the meaning set forth in the Recitals.

"Project Area" has the meaning set forth in the Recitals.

"Tax Increment Revenues" means all taxes allocated to, and paid into a special fund of the Agency for the Project Area pursuant to Article 6 of Chapter 6 of the Law and Section 16 of Article XVI of the Constitution of the State of California, and as provided in the redevelopment plan for the Project Area, including all payments and reimbursements, if any, to the Agency specifically attributable to *ad valorem* taxes lost by reason of tax exemptions and tax rate limitations; excluding amounts required to be deposited in the Agency's low and moderate income housing fund pursuant to the Law.

Section 2. Loan. The Foundation hereby loans to the Agency the amount of seven million five hundred thousand dollars ($7,500,000). The Agency agrees to use the loan amount to pay the construction costs for the Project as they become due and agrees that such amounts will be used to cover a portion of the total construction cost of the Project and for no other purpose.

Section 3. Loan Repayment; Interest Rate. The Agency and the Foundation agree that the outstanding loan balance will accrue interest, compounded annually, at the rate of 6.25% per annum commencing on the date of disbursement of the loan amount by the Foundation to the Agency until the balance of the loan is fully repaid. The Agency agrees that it will repay the loan and accrued interest as follows:

(a) Upon issuance of the Foundation Repayment Bonds, the Agency shall pay the Foundation the sum of $4,000,000 from the proceeds of the Foundation Repayment Bonds, which shall include accrued interest and principal, if accrued interest to date is less than $4,000,000.

(b) If the Foundation Repayment Bonds are issued on or prior to June 30, 2016, on each February 1 and August 1, commencing on the first such date which is at least 6 months after the date of issuance of the Foundation Repayment Bonds, the Agency shall pay

interest installments to the Foundation equal to the amount of interest which accrues during the previous six (6) month period on the outstanding loan balance, until the loan balance and all accrued interest thereon is fully repaid. If the Foundation Repayment Bonds are not issued on or prior to June 30, 2016~~5~~, on each February 1 and August 1 commencing August 1, 2017 the Agency shall pay interest installments to the Foundation equal to the amount of interest which accrues on the outstanding loan balance during the previous six (6) month period, until the loan balance and all accrued interest thereon is fully repaid.

(c) If the Foundation Repayment Bonds are issued on or prior to June 30, 2016, on each August 1 commencing on the first such date which is more than 12 months after the issuance of the Foundation Repayment Bonds, the Agency shall pay principal installments in addition to the interest due pursuant to Section 3(b) above to the Foundation equal to the amounts shown in Exhibit A1, attached hereto and incorporated herein, until the loan balance and all accrued interest thereon is fully repaid. If the Foundation Repayment Bonds are not issued on or prior to June 30, 2016, the Agency shall pay principal installments to the Foundation equal to the amounts shown in Exhibit A2, attached hereto and incorporated herein, until the loan balance and all accrued interest thereon is fully repaid.

(d) With the Foundation's consent which will not be unreasonably withheld, the Agency at any time may elect to prepay all or any portion of the outstanding loan balance without penalty from any source of legally available funds. In the event of a prepayment by the Agency, the annual principal payments required pursuant to Section 3(c) shall be reduced in each year by an amount equal to the percentage of the outstanding loan balance so prepaid.

(e) If the Agency has available funds that are not committed to the repayment of senior debt, it must repay the loan and accrued interest in full by December 31, 2039 unless an alternative agreement is reached with the Foundation.

Section 4. Source of Repayment; Subordination to Bonds. The Agency agrees to make all loan payments hereunder from Tax Increment Revenues or any other source of legally available funds. Agency's obligations under this Agreement are subordinate and junior to any Bonds and shall also be subordinate and junior to other indebtedness or form of obligation incurred prior to the effective date of this Agreement. The Agency hereby pledges and grants a security interest in the Tax Increment Revenues to the Foundation as security for the loan payments; provided, that such pledge and security interest shall be at all times subordinate to the obligation of the Agency to pay debt service on all Bonds. The Foundation agrees that, in the event the Agency does not have sufficient funds after payment of debt service on Bonds to make the scheduled payments hereunder, such amounts, to the extent that they are accrued interest, shall be treated as additional advances hereunder which increase the outstanding loan balance and the Agency shall not be declared in default hereunder. If the Foundation Repayment Bonds are issued and are less than the sum of $4,000,000, the Agency shall endeavor to use unencumbered revenue to pay interest due pursuant to Section 3(b) above to the Foundation equal to the amounts shown in Exhibit A1, and if possible, principal installments. Notwithstanding any default by the Agency hereunder, under no circumstances shall the amounts due to the Foundation hereunder be subject to acceleration.

Section 5. Amendments. This Loan Agreement may be amended from time to time by the parties hereto for any purpose by an instrument in writing signed by a duly authorized representative of the Agency and the Foundation. These amendments may allow for the Foundation to sell some or all of the loan to third parties or for the repayment schedule to be adjusted if mutually approved by the Parties. Both the Agency and the Foundation shall cooperate with one another to approve amendments that are not harmful to either party, which amendments shall be approved by a majority of the Board of Trustees in the case of the Foundation.

Section 6. Representations and Warranties of the Foundation.

The Foundation hereby makes the following representations and warranties to the Agency:

(a) The Foundation is a duly organized and existing non-profit public benefit corporation under the laws of the State of California, has full legal power and authority to enter into this Loan Agreement and has duly authorized the execution and delivery of this Loan Agreement in accordance with its Bylaws and Articles of Incorporation.

(b) To the extent that the funds used by the Foundation to make the loan hereunder have been obtained from gifts, donations, grants or bequests, the use of such funds for such purpose is not inconsistent with the terms of any such gifts, donations, grants or bequests.

(c) The Foundation is wholly independent of, and is not controlled, either indirectly or directly by, the City of Lafayette or the Agency. This Loan Agreement is made as an arm's length transaction.

(d) The making of the loan and the execution and delivery of this Loan Agreement will not constitute a breach or default of any other obligation of the Foundation pursuant to any contract, agreement, indenture, mortgage, deed of trust or any other instrument.

Section 7. Representations and Warranties of the Agency. The Agency hereby makes the following representations and warranties to the Foundation:

(a) The Agency is a duly organized and existing agency of the State of California under the Law, has full legal power and authority to enter into this Loan Agreement and has duly authorized and approved the execution and delivery of this Loan Agreement and the performance of the Agency's obligations hereunder.

(b) The Agency will apply the proceeds of the loan hereunder solely to the cost of the Project and will not use such proceeds in a way such that, under the laws in existence as of the date hereof, the interest payable on the Foundation Repayment Bonds would not be excludable from gross income for federal and State of California income tax purposes.

(c) The Agency reasonably expects that it will have sufficient funds to pay all payments to the Foundation hereunder when due.

(d) The Agency is wholly independent of, and is not controlled by and does not control, either indirectly or directly, the Foundation. This Loan Agreement is made as an arm's length transaction.

~~(e) The making of the loan and the execution and delivery of this Loan Agreement and the performance of the Agency's obligations hereunder will not constitute a breach or default of any other obligation of the Agency pursuant to any contract, agreement, indenture, mortgage, deed of trust or any other instrument.~~The execution and delivery by the Agency of this Loan Agreement, the making of the loan, the performance of the Agency's obligations hereunder and the consummation of the transactions contemplated hereby will not result in the violation of any law, statute, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental authority to or by which the Agency is bound and will not conflict with, or result in a breach or violation of, any of the terms or provisions of, or constitute (with due notice or lapse of time or both) a default under, any lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which the Agency is a party or by which it is bound or to which any of its properties or assets is subject.

(f) No consent, approval, authorization or other order of any governmental authority or other third-party is required to be obtained by the Agency in connection with the authorization, execution and delivery of this Loan Agreement or with the authorization and making of the loan or the performance of the Agency's obligations hereunder.

Section 8. Notices. Whenever it shall be necessary for either Party to serve notice on the other regarding this Agreement, such notice shall be served either in person, by certified mail, return receipt requested to the addresses below.

Agency: City of Lafayette Redevelopment Agency
3675 Mt. Diablo Blvd., # 210
Lafayette, California 94549
Attn: Executive Director

Foundation: Lafayette Library and Learning Center Foundation
P. O. Box 1472
Lafayette, California 94549
Attn: Treasurer

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

Section 9. Legal Costs. In the event of any legal action between the Agency and the Foundation arising out of the obligations of the Parties pursuant to this Agreement, the prevailing Party will be entitled to payment of its costs and expenses, including its attorneys' fees.

Section 10. Binding Effect; Successors. The Foundation shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Agency, which may be given in the Agency's sole and absolute discretion, but shall not be unreasonably withheld. Any attempt to do so in violation of this provision shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. This Agreement shall bind and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns and all of the Parties thereto shall be jointly and severally liable hereunder.

Section 11. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument which shall be binding upon the Parties notwithstanding that the Parties may not be signatories to the same counterpart or counterparts. The Parties may integrate their respective counterparts by attaching the signature pages of each separate counterpart to a single counterpart.

Section 12. Further Assurances. Whenever requested to do so by the other Party, each Party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, release, powers of attorney, instruments of further assurance, approvals, consents, and any further instruments or documents that are necessary, expedient, or proper to complete anything contemplated by this Agreement. In addition, each Party shall do any other acts and execute, acknowledge, and deliver any requested documents in order to carry out the intent and purpose of this Agreement.

Section 13. Modifications. All modifications to this Agreement must be in writing and signed by the Parties.

Section 14. Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies.

Section 15. Governing Law; Choice of Venue. This Agreement shall be governed and construed in accordance with California law. Venue shall be Contra Costa County.

Section 16. Severability. If any provision of this Agreement becomes or is declared by a court to be illegal, unenforceable or void, that clause will be omitted and the remainder of the Agreement will continue in full force and effect. Such holding shall in no way affect the validity or enforceability of this Agreement.

Section 17. Entire Agreement. This Loan Agreement constitutes the entire agreement between the Agency and the Foundation concerning the matters described herein and

supercedes any and all other agreements, contracts, covenants, resolutions or other arrangements with respect to the subject matter hereof.

IN WITNESS HEREOF, the parties hereto have executed this Loan Agreement as of the day and year first above written.

LAFAYETTE LIBRARY AND LEARNING CENTER FOUNDATION

By: _____
[Title]

LAFAYETTE REDEVELOPMENT AGENCY

By: _____
Executive Director

Exhibit A1

Principal Repayment Schedule [JMC1]
(Assuming Issuance of Foundation Repayment Bonds)

Payment Date*	Payment Amount
August 1, Year 1	$
August 1, Year 2	

*Year 1 shall be the first year of required repayment pursuant to Section 3(c) of this Loan Agreement and each subsequent payment date shall be the anniversary date of the preceding payment date.

Exhibit A2

Principal Repayment Schedule
(Assuming No Issuance of Foundation Repayment Bonds)

Payment Date (August 1)	Payment Amount
2015	$
2016	

LOAN AGREEMENT

By and among

LAFAYETTE REDEVELOPMENT AGENCY

and the

LAFAYETTE LIBRARY AND LEARNING CENTER FOUNDATION

April __, 2008

LAFAYETTE LIBRARY AND LEARNING CENTER USE AGREEMENT

This Use Agreement ("Agreement") is entered into this _____day of April, 2008, by and between the City of Lafayette ("City") and the Lafayette Library and Learning Center Foundation ("Foundation"). The City and the Foundation are sometimes collectively referred to in this Agreement as the "Parties" and individually referred to as "Party". The Agreement is made in light of the following Recitals:

RECITALS

A. The Lafayette Redevelopment Agency ("Agency") is in the process of constructing a new and expanded library in the City of Lafayette, which library shall be known as the Lafayette Library and Learning Center ("Library"). The Library includes the Glenn Seaborg Learning Consortium ("Consortium").

B. The Library is located at the corner of Mt. Diablo Boulevard and First Street, in the City of Lafayette ("Property").

C. Agency intends to lease or transfer the Property to the City to maintain the Library and grounds.

D. The City and Contra Costa County ("County") have executed a Library Use, Operations and Maintenance Agreement dated January 13, 2004 (the "County Agreement"), in which the County agreed to operate the Library, and provide staff training, professional development, ongoing collection development, long-range planning and implementation of the Library Plan of Service. The number of hours during which the Library is open shall be determined by the amounts provided to fund these services as provided by the County, City, and other organizations, including the Foundation, pursuant to the Lafayette Library and Learning Center Funding Agreement between the Parties of even date herewith (the "Funding Agreement").

E. Pursuant to the County Agreement, County will occupy and be responsible for programming and services in secure third-floor library space, not including the Community Hall. County may work with the Foundation or other entities for the provision of these services.

F. The City is responsible for maintaining the Library.

G. Foundation desires to operate and manage the Consortium and provide financial Library support for programming, hours of Library operation, maintenance, and collections pursuant to the Funding Agreement between the parties and staff.

H. The Parties desire to enter into this Agreement in order to outline their roles and responsibilities regarding the Library and Consortium.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and in light of the above Recitals, which are hereby made a part of this Agreement, the Parties hereby agree as follows:

1. Term

The term of this Agreement shall commence upon April , 2008 and continue until December 31, 2039. ~~The Agreement may be renewed by mutual consent of the Parties for additional five (5) year terms. If the Parties desire to extend the term of the Agreement, unless otherwise agreed upon, the Parties must commence negotiations and discussions in good faith within the first three (3) months of the eighth year in the initial term and the third year of subsequent terms.~~

2. Responsibilities of the Parties

2.1 Responsibilities of the City

2.1.1. The City shall be responsible for the interior and exterior maintenance of the Library, including the Library grounds and parking structure, in a manner suitable to conduct Consortium events sponsored by the Foundation and rentals of space as approved by the Foundation.

2.1.2 The City shall lease Foundation secure office space on the second floor of the Library for the term of this Agreement at a cost equal to the amount spent to maintain the space and provide janitorial and other common building services on terms no less favorable than to other tenants. The space shall consist of approximately 350 square feet. The Parties shall execute a lease agreement in a form approved by the City and the Foundation.

2.1.3. The City shall provide leases for Library space to various parties to the extent possible, with varied lease durations and terms, with the goal of achieving beneficial relations among all lessees, as follows:

2.1.3.1 The City shall lease third floor library space to County for library programming and services.

2.1.3.2 The City shall lease first floor bookroom space to the Friends of the Lafayette Library for its programming and services.

2.1.3.3 The City shall lease first floor historical society space to the Lafayette Historical Society for its programming and services.

2.1.3.4 The City shall lease office space on the second floor to the Lafayette Arts and Sciences Foundation for its programming and services.

2.1.4 The City shall make the Arts and Sciences Classroom and the Community Hall available to the Foundation for its programming, fundraising and services, ~~on terms no less favorable than those granted under Section 2.1.3~~ in conformance with the City's rental policy for those spaces, notwithstanding, however that all Monday evenings and Tuesday evenings that

follow a Federal Holiday shall be exclusively reserved for City meetings in both spaces.

2.1.5 The City and the Foundation will work cooperatively to maximize use of all of the spaces in the Library to the benefit of all tenants and other organizations in Lafayette on terms no less favorable that those granted in Section 2.1. and consistent with 2.2.2. Such cooperation will include and assume flexibility in scheduling on the part of the City, Foundation and tenants.

2.1.6. The City shall use any and all spaces on the premises, as necessary, during an emergency or natural disaster.

2.1.7 The City shall have ultimate responsibility for the Library.

2.2. Responsibilities of the Foundation

2.2.1 Foundation shall only incur costs and expenses, including the expenses of its fundraising and general administration, that support programs related to the Library and Consortium.

2.2.2 Foundation shall be responsible for pricing, accounting, and management of room rentals of the Community Hall and the Arts and Sciences Classroom consistent with a City-approved room rental policy as annually reviewed and/or updated. Foundation shall promote high utilization of the Community Hall and the Arts and Sciences Classroom. Unless requested to do so by the County, Foundation shall not be responsible for renting or controlling the use of spaces managed by County Library System staff.

2.2.3 Foundation shall submit an annual plan for the Consortium to the City Council each year by _____, which shall be reviewed and approved by the City Council annually ("Consortium Plan") by _____. The Consortium Plan shall include the goals of the Consortium, which provides preference for a large range of events and classes with collective appeal to a broad majority of the community.

2.2.4 Foundation shall submit quarterly reports to the City, which provide information on the Foundation's performance compared with the Consortium Plan and other items of interest. Foundation shall provide representatives to discuss these reports with City Staff and the City Council.

2.2.5 Foundation shall conduct ~~its~~ all meetings where there is a majority of the Board present ~~Board meetings~~ in public as provided in the Foundation's bylaws, with appropriate notice as specified in the Foundation's bylaws and exceptions for certain matters as set forth in the Foundation's ~~Discussions relating to personnel matters, fundraising conversations relating to private donors, matters involving potential and actual litigation, and any other matter deemed sensitive or confidential by the Board, however, may be held in closed session pursuant to a majority vote of a quorum of Foundation members. All~~bylaws. All audited Foundation financial statements, excluding donor and prospect lists, shall be considered public records and shall be open to the public for inspection.

2.2.6 In the event Foundation dissolves or winds up, Foundation shall transfer, subject to Section 9 of this Agreement, all of its ~~funds~~responsibilities, its available funds, other assets after payment of, or provision for payment of, all its debts and liabilities, as set forth in the Foundation's bylaws. ~~to a fund overseen by the City, whose principal and proceeds can only be used to cover costs associated with the Lafayette Library and Learning Center. In such event, the City reserves the right to subsequently transfer fund to a separate non-profit organization with a mission similar mission to the Foundation's~~

3. Control and Payment of Subordinates; Independent Contractor

Foundation shall operate on an independent contractor basis and not as an employee of the City. Any additional personnel performing under this Agreement on behalf of Foundation shall also not be employees of City and shall at all times be under Foundation's exclusive direction and control. If applicable, Foundation shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Agreement and as required by law. Foundation shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

4. Default

4.1 Default by City

4.1.1 City shall be in default of this Agreement upon the occurrence of any one or more of the following:

(a) Failure to maintain the Library at a level required to attract patrons and events;

(b) Failure to provide Foundation with office space as provided for in this Agreement;

(c) Failure to make the Arts and Science Classroom and the Community Hall available to the Foundation as set forth above; and

(c) Failure to respond to Foundation's request for approval of its Consortium Plan.

4.2 Default by Foundation

4.2.1 Foundation shall be in default of this Agreement upon the occurrence of one or more of the following:

(a) Foundation is unable to manage its responsibilities under the Consortium Plan, pursuant to a modification of the Consortium Plan, for more than 8 months after the City's adoption of a modified Consortium Plan;

(b) Foundation uses its funds for causes not in support or furtherance of the Library and Consortium;

(c) Foundation becomes subject to any bankruptcy proceedings (except an involuntary bankruptcy proceeding dismissed within sixty (60) days after commencement);

(d) Foundation fails to conduct its Trustee's meetings in accordance with Section 2.2.5.

5. Remedies and Termination

5.1 Remedies

The Parties agree to provide each other with written notice of nonperformance, unsatisfactory performance, or any other dispute arising from the terms of this Agreement within thirty (30) days of the deficiency or dispute being identified. The Parties shall have ninety (90) days from receipt of said written notice to correct any performance deficiencies. This period may be extended at the mutual agreement of both Parties. The Parties agree to cooperate in good faith to resolve any performance issue or dispute arising from this Agreement. Either Party in its sole and absolute discretion may waive a default that cannot be cured.

5.2 Termination

In the event any dispute cannot be resolved under these procedures, each Party retains such legal and equitable remedies as it may have under law to enforce this Agreement. If either Party defaults under this Agreement and does not timely cure such default, the non-defaulting Party may terminate this Agreement upon providing written notice of termination of this Agreement to the defaulting Party, in which case this Agreement shall terminate. Notwithstanding the above, Foundation shall continue to provide the City for the duration of the term of the Agreement with all of its remaining funds to support programs, maintenance, collections and operations at the Library and the Consortium.

6. Indemnification

6.1 City agrees to indemnify, defend and hold harmless Foundation, its officials, officers, trustees, employees, agents and consultants on account of any and all claims for damages because of (i) personal injury, sickness or death of any person, injury, damage or destruction to property, (ii) any breach by the City of any representation, warranty or covenant of this Agreement, (iii) any violation by the City of any applicable local or state laws, ordinances, rules, regulations or lawful orders bearing on the performance of any obligations under this Agreement, or (iv) other cost , charges or damages arising out of in any way the operation of the Lafayette Library. This indemnification is intended to be as broad as possible and as broad as allowed by law. Only in the instance of damage caused solely and exclusively by the ~~gross~~

negligence and/or ~~gross~~ malfeasance of the Foundation or its employees or agents will the indemnification not apply. This indemnification includes but is not limited to indemnifying for attorneys fees, costs and other related expenses, including expert witness fees incurred by the Foundation directly, through its carriers or for its agents and/employees.

6.2 Foundation agrees to indemnify, defend and hold harmless City, its officials, officers, trustees, employees, agents and consultants on account of any and all claims for damages because of personal injury or death or damages to property, or other costs and charges, directly or indirectly arising out of or attributable to, ~~in whole or in part,~~ the negligence and/or the malfeasance of the Foundation~~'s gross negligence and/or gross malfeasance~~, its officers, employees, agents and/or consultants in the performance of its obligations under this Agreement. The coverage of such indemnification shall include, without limitation, attorneys' fees and court costs incurred by the City with regard thereto.

7. Notices

Whenever it shall be necessary for either Party to serve notice on the other regarding this Agreement, such notice shall be served either in person, by certified mail, return receipt requested to the addresses below.

City: City of Lafayette
3675 Mt. Diablo Blvd., # 210
Lafayette, California 94549
Attn: City Manager

Foundation: Lafayette Library & Learning Center Foundation
P. O. Box 1472
Lafayette, California 94549
Attn: Treasurer

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

8. Legal Costs

In the event of any legal action between the City and Foundation arising out of the obligations of the Parties pursuant to this Agreement, the prevailing Party will be entitled to payment of its costs and expenses, including its attorneys' fees.

9. Binding Effect; Successors

Foundation shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City, which may be given in the City's sole and absolute discretion. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason

of such attempted assignment, hypothecation or transfer. This Agreement shall bind and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns and all of the Parties thereto shall be jointly and severally liable hereunder.

10. Counterparts

This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument which shall be binding upon the Parties notwithstanding that the Parties may not be signatories to the same counterpart or counterparts. The Parties may integrate their respective counterparts by attaching the signature pages of each separate counterpart to a single counterpart.

11. Further Assurances

Whenever requested to do so by the other Party, each Party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, release, powers of attorney, instruments of further assurance, approvals, consents, and any further instruments or documents that are necessary, expedient, or proper to complete anything contemplated by this Agreement. In addition, each Party shall do any other acts and execute, acknowledge, and deliver any requested documents in order to carry out the intent and purpose of this Agreement.

12. Modifications

All modifications to this Agreement must be in writing and signed by the Parties.

13. Third-Party Rights

Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies.

14. Governing Law; Choice of Venue

This Agreement shall be governed and construed in accordance with California law. Venue shall be Contra Costa County.

15. Severability

If any provision of this Agreement becomes or is declared by a court to be illegal, unenforceable or void, that clause will be omitted and the remainder of the Agreement will continue in full force and effect. Such holding shall in no way affect the validity or enforceability of this Agreement.

16. Entire Agreement

This Agreement is the entire agreement between the Parties and supersedes any prior or contemporaneous representations, understandings or agreements, whether written or oral.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first hereinabove written.

[Signatures on the following page]

City of Lafayette

_____
Mike Anderson, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk

Lafayette Library and Learning Center Foundation

_____
Treasurer~~(Title)~~